

R E M A R K S

Claims **1-42 and 53 - 56** are pending in the present application.
Claims **1, 12, 26, 31, 34, 38-42 and 53** are independent.

A. Election / Restriction

Applicants affirm election of groups I and II, claims **1 – 42 and 53 – 56**.

B. Drawings

The drawings have been corrected as requested by the Examiner. No new matter has been entered. New FIG. 6 has been added to illustrate the product marker of claim **29**. Support for the new FIG. 6 may be found at, e.g., claims **26 and 29** as filed.

C. Specification Amendments

The specification has been amended to refer to new FIG. 6. Support for the amendment may be found at, e.g., claims **26 and 29** as filed.

D. Section 112, first paragraph Rejections

Claims **28 - 30** stand rejected as containing subject matter not described by the specification. Specifically, with respect to the terms egress control device, product marker, and product receipt, paragraph number 9 (pages 4 – 5) of the Office Action states:

“[it] merely mentions in the specification on pages 15 and 17 that they are part of the POS terminal 210 and kiosk 220. There is no enablement of how they are implemented.”

Applicants respectfully traverse the Examiner’s Section 112 rejection.

Claims 28 and 30.

Claims **28 and 30** have been canceled to facilitate early allowance of the present application, rendering the rejection moot. The subject matter of claims **28 and 30** will be pursued in a continuing application.

Claim 29.

The specification enables the “product marker” of claim **29**.

A product marker may be “a sticker or other indicia which verifies that the transaction has been authorized in accordance with the default transaction terms”. Specification, page 15, line 29 – 30. The product marker may be dispensed by the receipt terminal. Specification, page 15, line 28 – 29. The product marker may be affixed to the product. Claim 29 as originally filed.

Finally, page 16, lines 2 – 6 of the specification describe that customers may be “required to show an authorization record including the ... product sticker ... in order to exit the seller’s facility while in possession of a product.”

Also, contrary to the Examiner’s assertion, nowhere does the specification describe or suggest that the product marker is part of either the POS terminal 210 or the kiosk 220. On the contrary, the product marker may be “dispensed by” a terminal.

E. Section 112, second paragraph Rejections

Claims **55 and 56** stand rejected as being indefinite. Applicants respectfully traverse the Examiner's Section 112 rejection.

The "final price" of claim **55** is the same "final price" as recited in claim **53** from which it depends. Applicants are unaware of any way in which "the final price" in dependent claim **55** could be anything other than the same "final price" recited in independent claim **53**. The Office Action does not explain how "the final price" of claim **55** could in any way differ from the identical term in claim **53**. Applicants would greatly appreciate any suggestions the Examiner believes would improve the clarity or precision of any claim language used. MPEP 2173.02.

It is well settled that antecedent basis for a term in a dependent claim derives from use of the word "the" before a term to indicate it is the same as a previous term. MPEP 2173.05(e). Accordingly, use of "the" in "the final price" unambiguously indicates that "the final price" of claim **55** is the same final price as the "final price" of claim **53**.

F. Section 102 Rejections

Claims **1 – 3, 5, 12, 13, 15 – 19, 24 – 27, 31 – 42 and 53 – 56** stand rejected as anticipated by U.S. Patent No. 5,794,207 to Walker et al. Applicants respectfully traverse the Examiner's Section 102 rejection.

Independent claims 1, 12, 26, 31, 34, 38 – 42 and 53.

Independent claims **1 and 38** recite "conveying a product to a customer before an associated transaction term has been finalized".

Independent claims **12 and 39** recite "conveying a product to a customer before a final sale price is determined".

Independent claims **26 and 40** recite "authorizing conveyance of a product to a customer before a final sale price is determined".

Independent claim **53** recites "a customer who takes possession of a product from a seller before a price for the product has been finalized"

Independent claims **31 and 41** recite "conveying the product to the customer" with "non-final sale price term", and subsequently "completing the purchase transaction using the second override price as the sale price term".

Independent claims **34 and 42** recite acquiring the product subject to a default value of a transaction term, and subsequently "completing the purchase transaction using the first override value for the transaction term".

The Walker system does not disclose or suggest conveying a product to a customer before an associated transaction term has been finalized. (independent claims **1 and 38**)

Similarly, the Walker system does not disclose or suggest conveying or authorizing conveyance of a product to a customer before a final sale price is determined, or before a price for the product has been finalized. (independent claims **12, 26, 39, 40 and 53**)

Similarly, the Walker system does not disclose or suggest conveying a product to a customer before a sale price term is used. (independent claims **31 and 41**)

Similarly, the Walker system does not disclose or suggest acquiring a product subject to a default value of a transaction term, and subsequently completing the purchase transaction using a first override value for the transaction term. (independent claims **34 and 42**)

In Walker, the terms of the sale are finalized, and only then is the product conveyed to the customer. In other words, in Walker a product is conveyed after a sale price is determined. In fact, a stated advantage of the Walker system is that a seller knows before an offer is even accepted that the buyer is ready and willing to pay the specific price the buyer offers. *See, e.g., Col. 8, line 66 – Col. 9, line 4* (“Before communicating the CPO to potential sellers, the central controller ... may require that the buyer provide a credit card number and may also ensure that the buyer has sufficient credit available to cover the purchase price specified in the CPO ...”); *Col. 10, lines 31 – 39; Col. 11, lines 45 – 51* (“The present invention receives conditional purchase offers from buyers, makes them available for viewing by potential sellers, and allows sellers to bind them. Thus, a buyer is able to communicate his commitment to follow through on an offer to a seller, giving the seller confidence that if he can produce the goods, the buyer has the ready capacity to pay.”)

Specifically, in Walker, a CPO specifies the price a customer is willing to pay for a good. *See, e.g., Col. 9, line 4* (“the purchase price specified in the CPO”); *Col. 13, line 24* (“CPO database 265 tracks all CPOs 100 with fields such as ... price ...”); *Col. 17, lines 53 – 55* (“CPO database 265 contains a record for each CPO 100, and includes fields such as ... price ...”); *Col. 20, line 24* (“the price of CPO 100”); *Col. 22, lines 23 – 24* (“the offered price of CPO 100 to be paid upon binding”); *Col. 23, lines 27 – 29* (“the terms of CPO 100 such as ... price ...”); *Col. 23, lines 58 – 59* (“skipping any CPO 100 with a lower price”); *FIG. 5, step 550 and accompanying text beginning at Col. 16, line 49* (“the buyer enters a price” for the CPO); *FIG. 6, step 600 and accompanying text beginning at Col. 17, line 27* (“the stated price of the CPO”); *claims 1, 12, 23, 34* (“a conditional purchase offer which includes an offer price”).

The price of the CPO becomes the final sale price when a seller accepts the CPO. The Walker patent also describes the CPO as having been “bound” when it is accepted, so the buyer is committed to paying the price he specifies in the CPO. *See, e.g., Col. 15, lines 51 – 55* (“Periodic maintenance is performed ... to ensure that ... the buyer has sufficient credit available to pay a seller who elects to bind CPO 100.”); *Col. 17, lines 27 – 30* (“CPO 100 is ... checked to see that sufficient credit is available to cover the stated price of CPO 100”).

When the CPO is accepted (and thus when the final sales price is established), the goods have not yet been conveyed to the customer. In fact, after a price is specified by a buyer and accepted by a seller, the central controller authenticates the seller’s capacity to deliver the goods the buyer desires (i.e. before the goods are conveyed). *See, e.g., Col. 9, lines 17 – 22* (“If, after reviewing a particular CPO, a potential seller wishes to accept the CPO, the seller communicates his intent to the central controller. The central controller then ... authenticates the identity of the seller and his capacity to deliver the goods sought by the buyer.”); *Col. 19, lines 14 – 21* (“At step 1000, the potential seller selects CPO 100 which he would like to bind ... Central controller 200 then timestamps seller response 110 and authenticates the identity of the seller, as well as verifying his probable capacity to deliver the goods.”); *Col. 19, lines 36 – 37* (“If necessary, central controller 200 may verify that the seller can provide the specific good requested.”).

Clearly, the goods cannot have been conveyed at this time, but only after this time. Accordingly, Walker does not disclose or suggest all of the limitations of any independent claim.

For at least the same reasons, Walker does not disclose or suggest all of the limitations of any dependent claim.

G. Section 103(a) Rejections

Claims 4, 6 – 11, 14 and 28 - 30 are rejected as being unpatentable over Walker in light of other references. Applicants respectfully traverse the Examiner's Section 103(a) rejection.

As stated above, all independent claims distinguish over Walker. For the reasons stated above, the dependent claims likewise distinguish over Walker and the other references. None of the references cited by the Examiner, alone or in combination, disclose or suggest the limitations of the independent claims discussed above.

Official Notice

The Examiner has taken "official notice that the use of egress control devices, product marker and receipts would have been obvious to one of ordinary skill in the art in order to facilitate sales." (Office Action, page 8). The Examiner then concludes that "it would have been obvious to one of ordinary skill in the art ... to modify the Walker et al. system to incorporate the use of egress control devices, product markers and receipts in order to facilitate sales. (Office Action, page 8).

Although the Office Action does not state the specific claims rejected under this reasoning, Applicants assume this reasoning is applied to the rejection of claims 28 – 30 and no others.

The officially-noted subject matter comprises the principal evidence upon which the rejection of claims 28 – 30 was based. Applicants note that officially-noted subject matter cannot be used as the primary basis for a rejection under 103. A reference must be provided to show the scope and content of the prior art.

From the terse nature of the Official Notice described on page 8 of the Office Action, Applicants cannot properly determine why the Examiner believes such egress control devices, product markers and receipts would have been obvious as recited in the claimed methods. However, Applicants dispute all of the assertions regarding the officially noted subject matter. Applicants dispute that any prior art egress devices, product markers and receipts were used at all in connection with authorizing conveyance of a product to a customer before a final sale price is determined as recited in claims 28 - 30.

Applicants request a reference to describe the official noted subject matter in more detail. MPEP 2144.03. If instead the rejection is based on facts within the personal knowledge of the examiner, Applicants request support by an affidavit from the examiner. MPEP 2144.03

No Motivation to Combine or Modify

In addition, there is no reason to modify the Walker reference to incorporate the use of egress control devices, product markers and receipts. Moreover, the Examiner has not proposed any sort of motivation to combine or modify Walker other than "to facilitate sales". Since Walker deals exclusively with remote communication, there would be no reason and no advantage to include egress control devices, product markers or receipts in the manner proposed.

Conclusion

For the foregoing reasons it is submitted that all of the claims are now in condition for allowance and the Examiner's early re-examination and reconsideration are respectfully requested.

Alternatively, if there remains any question regarding the present application or any of the cited references, or if the Examiner has any further suggestions for expediting allowance of the present application, the Examiner is cordially requested to contact Dean Alderucci at telephone number 203-461-7337 or via electronic mail at Alderucci@WalkerDigital.com.

Petition for Extension of Time to Respond

Applicants hereby petition for a **three-month** extension of time with which to respond to the Office Action. Please charge \$460.00 for this petition to our Deposit Account No. 50-0271. Please charge any additional fees that may be required for this Response, or credit any overpayment to Deposit Account No. 50-0271.

If an extension of time is required, or if an additional extension of time is required in addition to that requested in a petition for an extension of time, please grant a petition for that extension of time which is required to make this Response timely, and please charge any fee for such extension to Deposit Account No. 50-0271.

Respectfully submitted,



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July 31, 2002
Date